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NOMINATION—FCC

HEARING

BEFORE THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

ONE HUNDRED FIRST CONGRESS

SECOND SESSION

ON

NOMINATIONS

MAY 14, 1990

ANDREW C. BARRETT, TO BE A MEMBER, FEDERAL COMMUNICATIONS COMMISSION

Printed for the use of the
Committee on Commerce, Science, and Transportation

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NOMINATION—FCC

MONDAY, MAY 14, 1990

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC.

The committee met, pursuant to notice, at 11:00 a.m. in room SR-253, Russell Senate Office Building, Daniel K. Inouye, presiding.

Staff members assigned to this hearing: John Windhausen, staff counsel; Becky Kojm, professional staff member; and Ruth Johnson, minority professional staff member.

OPENING STATEMENT BY SENATOR INOUYE

Senator INOUYE. It is the committee's pleasure this morning to consider the renomination of Mr. Andrew C. Barrett to be commissioner of the Federal Communications Commission. This is Commissioner Barrett's second appearance before us. Last year the subcommittee considered and the full committee confirmed Mr. Barrett to fill the final year of a term which will expire on June 30, 1990. Mr. Barrett has been renominated by President Bush for an additional five-year term as Commissioner.

The purpose of this morning's hearing is to consider Mr. Barrett's record over the last nine months as Commissioner and to determine his fitness to serve a new term. From my perspective, Mr. Barrett has proven to be a very valuable addition to the Commission. He has demonstrated all the qualities of a fine public servant. He has been a fair and balanced decisionmaker. He has worked hard to consider the issues and understand the issues, and he has presented himself to the public as an honest and forthright spokesman for FCC policies.

As we all know, the FCC is presently dealing with a number of critical issues that have tremendous implications for the communication industry. Some examples are the financial interest and syndication rules, price caps for local telephone companies, proposals to loosen the regulations of AT&T, and various proposals to allocate spectrum.

So it is of utmost importance that the Nation have strong people at the FCC who will not be afraid to make these difficult decisions. While we may not always see eye to eye on these matters, I have gained respect for the qualities that Mr. Barrett has brought to his responsibilities. He has demonstrated the confidence to consider opposing points of views and the strength to make his decisions based upon his view of the public interest. I think we would do well to have this kind of commissioner at all our independent agencies.

So, Mr. Barrett, I welcome you and look forward to hearing your statement and responses to questions posed by Members of the committee. It is my hope that we will be able to report your nomination when the full committee meets next week.

I notice the presence of our very distinguished leader, the Honorable Robert Dole.

STATEMENT OF HON. ROBERT DOLE, U.S. SENATOR FROM KANSAS

Senator DOLE. Thank you, Mr. Chairman, Senator Burns. I think maybe we ought to quit while we are ahead. I think his statement is better than mine.

Senator INOUYE. I think you are ahead right now.

Senator DOLE. There is no question about it. This is a very important committee. This is a very important job, and I think the Chairman is precisely right when he said that this nominee, who has been on the job nine months, has demonstrated an ability to work, not only with Members of the Congress, but in his various constituent groups and responsibilities.

So I am here to indicate my support for the nominee. I might add that I am very pleased that he was one of my supporters out in Illinois before we dropped out of the race in 1988. His wisdom in that area, too, I think is worth noting.

There's no doubt about it, Mr. Chairman, this committee has a full plate of issues this session. They're not small issues, either; cable regulation legislation, new business opportunities at home and abroad for American telephone companies, review of the financial interest and syndication rules. These call on your committee to address fundamental questions regarding this Nation's telecommunications policy and the structure of its communications industries.

In tackling these questions, it's more important than ever that Congress and the FCC be partners in a solid working relationship. It looks to me like we're off to a good start. You yourself, Mr. Chairman, have taken the initiative in this regard, knowing that it's got to be a two-way street. In my view you deserve great credit for your leadership in doing so.

But it's critical that the FCC have a full team on board as it grapples with these questions—a team that understands the issues, and will work with the Congress in finding the right mix of solutions, regulatory and competitive.

He is uniquely qualified to be on the team. He has a long and positive record as a State regulator, and he has made government and industry work together for growth and for the public benefit for nine years as a member of the Illinois Commerce Commission.

I think more importantly, as the Chairman has said, he has had a nine-month testing period. He has done very well, and I know of no reason he should not be renominated. I am very pleased to be here to urge that the appointment be speedily considered. It has been indicated that if taken up by the full committee next week, there may even be some hope we might have it on the floor before the Memorial Day recess.

In any event, Mr. Chairman, I appreciate your courtesy and your support of the nominee. Again, for Mr. Barrett I am very pleased to be here, and I wish you success.

Mr. Chairman, there's a great deal to do. I urge that Commissioner's Andy Barrett's appointment be speedily considered.

Thank you.

Senator INOUYE. If the leader is not going to object to bringing up the nomination, we can cut a few corners in bringing him up.

Senator DOLE. We can take it up today; why not.

Thank you, Mr. Chairman.

Senator INOUYE. Senator Burns, do you have any statement before Mr. Barrett proceeds?

OPENING STATEMENT BY SENATOR BURNS

Senator BURNS. Thank you, Mr. Chairman. I would like to take this opportunity to welcome you, Mr. Barrett.

I look forward to working closely with you in your position as Commissioner of the Federal Communications Commission.

As you well know, the FCC is an extremely important Government agency, especially considering the fact that we are entering the "Information Age."

In fact, today is the "Information Age," and telecommunications comprises its chief transportation system. Invisible highways of fiber optic cable and radio waves each second carry trillions of bits of information vital to the smooth functioning of our economy and society.

Communications affords individuals expanded access to information. In fundamental ways, it thus offers the individual greater freedom, and more social and economic power. By capitalizing on these electronics effectively, America has the opportunity to become more competitive in the world economy while, at the same time, enriching the overall quality of our national life.

Again, welcome Mr. Barrett. I look forward to your statement and wish you well as you take on this important position at the FCC.

Senator INOUYE. Thank you, Senator.

[The biographical sketch and prehearing questions and answers follow:]

ERNEST F. HOLLINGS, SOUTH CAROLINA, CHAIRMAN
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WALTER B. McCORMICK, JR., MINORITY CHIEF COUNSEL AND STAFF DIRECTOR

United States Senate
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION
WASHINGTON, DC 20510-6125

STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

(If more space is needed, please use attached REMARKS sheet)

A. BIOGRAPHICAL DATA

1. Name: Barrett (Last) Andrew (First) C. (Other)

   Address: Crystal Towers South, 1600 South Eads Street (Current residence); 1919 M Street, N.W. (Business)

   Arlington, VA. 22202; Washington, D.C. 20554

2. Position to which nominated: Commissioner — Date of nomination: 04/25/90

3. Date of birth: 04 (month) 14 (day) 40 (year) — Place of birth: Rome, GA.

4. Marital status: Single — Full name of Spouse: N/A

5. Names and ages of children: N/A

6. Education:

Institution	Dates attended	Degrees received	Dates of degrees
DePaul University	01/71-02/75	Juris Doctors	02/75
Loyola University of Chicago	06/69-01/71	Masters	02/71
Roosevelt University of Chicago	08/66-06/69	Bachelors	06/69

7. Employment record: List all positions held since college, including the title or description of job, name of employer, location of work, and dates of inclusive employment.

	From	To	Name of employer	Address	Type of work
	9/8/89	Present	FCC	1919 M Street, NW Wash., DC 20554	Regulation
*	5/80	9/7/89	Illinois Commerce Commission	100 W. Randolph Chicago, IL	Utility Regulation
*	5/79	5/80	Illinois Dept. of Commerce	620 E. Adams Springfield, IL	Economic Development
*	6/75	5/79	Illinois Law Enforcement Commission	120 S. Riverside Chicago, IL	Law Enforcement Funding
	5/71	1/75	Chicago NAACP	7 E. 63rd Street Chicago, IL	Legal, Human & Civil Rights
	9/68	5/71	National Conference of Christians & Jews	203 N. Wabash Chicago, IL	Educational/ Training
	8/66	9/68	YMCA of Metropolitan Chicago	755 W. North Ave. Chicago, IL	Educational/ Training

8. Government experience: List any experience in or direct association with Federal, State, or local governments including any advisory, consultative, honorary or other part-time service or positions.

* The above were full-time positions with the State of Illinois.

1. Roosevelt University - Part-time/Taught Government, Political Science & Public Policy Courses
2. Loyola University - Part-time/Taught Politican Science & Public Policy Courses
3. Member - Mayor School Board Nominating Committee - City of Chicago
4. Member - Governors' Revenue Study Commission - State of Illinois
5. City Colleges of Chicago - Taught Administration of Criminal Justice

9. Political affiliations activities: List all memberships and offices held in or financial contributions and services rendered to all political parties or election committees during the last 10 years.

1. I have served on (three) Fundraising Committees for the Governor of Illinois
2. I am a member of the National Republican Committee, the State of Illinois Republican Committee
3. I served on Fundraising Committees (twice) for the late Mayor Harold Washington of Chicago
4. I ran as a Delegate (Republican) to the Republican Nat'l Convention in 1988

I have never had any Fundraisers for myself, nor have I ever held any office in a political organization, although I was involved in the following:

a) Coordinator Congressional District for Reagan-Bush 1980-1984 and
b) Black Republicans for Bush-Quayle and Coordinator for Congressional District.

These were not considered offices nor policy making positions.

10. Memberships: List all memberships and offices held in professional, fraternal, scholarly, civic, charitable, and other organizations.

1. YMCA of Metropolitan Chicago - Board Member & Secretary to the Board
2. City Colleges of Chicago Foundation - Board Member & Chairman of Executive Committee
3. Chicago Urban League - Board Member
4. University of Illinois School of Medicine, Corporate Advisory Board
5. The Economic Club of Chicago.

11. Honors and awards: List all scholarships, fellowships, honorary degrees, honorary society memberships, and any other special recognitions for outstanding service or achievement.

	YEAR	ORGANIZATION	AWARD
1.	1988	Northeastern Illinois Univ.	President's Meritorious Service Award
2.	1985	Chicago Boys-Girls Club	Community Leadership Award
3.	1983	Chicago Urban League	Community Service Award
4.	1983	Blackbook Business Magazine	Business & Professional Award
5.	1974	Chicago Jaycees	Chicago's Ten Outstanding Young Citizens Award
6.	1972	Coalition for Community Action	Community Service Award
7.	1972	South End Jaycees	Chicago's Ten Outstanding Young Men Award

12. Published writings: List the titles, publishers, and dates of books, articles, reports, or other published materials you have written.

1. The Potential of Fiber Optics to the Home: A Regulator's Perspective - Public Utilities Fortnightly, 1/19/89
2. The Future of Local Exchange Competition: The Illinois Experience - Telematics Volume 5, Number 11, 11/89
3. Bypass: Illinois' Cure for NTS Costs - Telephone Engineer & Management Magazine, 6/15/87
4. Water The Future Look Brighter - National Association of Water Magazine, 11/28/84
5. Simplified Rate Case Procedure for Small Water & Sewer Utilities in Illinois, 11/83

RESPONSES TO PRE-HEARING QUESTIONS
FROM COMMISSIONER ANDREW C. BARRETT

1. HOW WOULD YOU CHARACTERIZE THE CURRENT RELATIONSHIP BETWEEN THE FCC AND THE CONGRESS?

I believe the current relationship between the FCC and the Congress is one of respect, mutual understanding, and open communication. As a Commissioner, I understand the importance of maintaining and nuturing this relationship. I have been pleased to be a member of the Commission at a time when relations with Congress have improved significantly. I have observed a rejuvenated dialogue and the sharing of knowledge and expertise between the Congress and the Commission. Given the complexity and difficulty of the telecommunications policy questions before the Congress and the FCC, I believe the current atmosphere of communication between the Congress and the Commission will greatly benefit the public.

The FCC was created to administer the laws mandated by the Congress. I understand the importance of that role and have the highest respect for the Commission's obligations to carry out those laws. As a Commissioner, I am reminded daily of the importance of maintaining excellent communications with the Congress. I am sensitive to the need not only to understand and enforce the laws of the Congress, but also to keep abreast of all Congressional concerns and inquiries regarding future policy directions.

Since completing my previous confirmation hearing and starting my work at the Commission, I have learned invaluable lessons about the need to respond promptly to the concerns and inquiries of the Congress. I believe that nurturing a mutual understanding and open dialogue with the Congress is absolutely essential. By maintaining a healthy relationship with the Congress, I believe the Commission is given the opportunity to establish Commission rules or policy that respond more effectively to the needs of the public. Thus, it is absolutely essential that the Commission enforce the laws of the Congress, and when requested, work with the Congress to provide information useful to its policy deliberations.

2. HOW WOULD YOU CHARACTERIZE YOUR EXPERIENCE TO DATE AS A COMMISSIONER AT THE FCC?

I am very grateful for the opportunity given to me by President Bush and the Senate in allowing me to serve as an FCC Commissioner. I certainly have enjoyed the experience which has included not only the chance to apply what I already know, but also the opportunity to learn a great deal. I commenced my service as a Commissioner on September 8, 1989. Since that time, I have been part of the decision-making process for a wide range of complex policy issues I also have been fortunate to be chosen as: (1) the FCC Defense Commissioner, (2) a member of the 410(b) Joint Conference on Open Network Architecture; and (3) a member of the two Joint Boards currently addressing jurisdictional separations issues. Working closely with Chairman Alfred Sikes and my fellow Commissioners, I have had an opportunity to take part in reshaping the Commission's policy framework for the 1990's and beyond. If given the opportunity, I look forward to continuing my work at the Commission and

addressing the enormous range of complex issues facing our communications industries today.

In my eight months at the Commission, I have experienced the various roles that a Commissioner must serve to fulfill his or her obligations under the Communications Act. In the mass media area, I have fulfilled roles as an enforcer, a mediator, and a policymaker. I have supported decisions to enforce strictly Commission rules in such areas as indecency, equal employment opportunity (EEO), and other adjudicatory proceedings. Further, I have learned about and responded to the need to conduct inquiries or rulemaking proceedings in areas such as cable, financial interest and syndication, AM broadcasting, licensee character policies, and the comparative hearing process. In addition, I have responded to the need to serve as a mediator on issues affecting programmers and broadcasters.

In the common carrier area, I have served as an enforcer, policymaker, and administrative decisionmaker. To that end I have supported inquiries or rulemaking proceedings in the area of incentive regulation for the local exchange carriers, interexchange competition policies, and satellite programming access. I also have supported actions that will bring the delivery of information services to the public by ruling on the Open Network Architecture Plans of the Bell Operating Companies. Further, I have supported enforcement decisions in the cellular area and regarding cross-subsidization between the regulated and unregulated activities of telephone companies. In the private radio area, I have gained an appreciation for the dynamic growth in mobile communications markets around the world. To that end, I have responded to the need to conduct inquiries or rulemaking proceedings in areas affecting Specialized Mobile Radio operations, frequency coordination, and other specialized private radio services. Finally, in the new technology area, I have supported decisions to allocate spectrum to the air-to-ground phone service, and to grant experimental authorizations to the mobile satellite service and personal communications network service.

Mass Media Issues

3. THE FCC HAS STATED THAT IT BELIEVES THAT BROADCAST REGULATION SHOULD FOLLOW THE "PRINT" MODEL BECAUSE THERE IS NO LONGER A SCARCITY OF BROADCAST SPECTRUM, WHILE THE PRESIDENT OF THE NAB HAS TAKEN THE POSITION THAT THE SPECTRUM IS SCARCE. WHERE DO YOU STAND ON THIS ISSUE?

After serving eight months at the Commission, I continue to believe that, due to the increasing number of operations competing for spectrum based service, there is a need to set spectrum management and allocation policies that are premised on the assumption that radio spectrum is a finite resource. Whether that is true in the absolute scientific sense is not the only issue. From an policy standpoint, I believe the main issue is whether spectrum scarcity should continue to be a basis for the Commission's regulatory scheme in the licensing and spectrum allocation areas. I believe that it should for several reasons.

First, this presumption forces the Commission to perform its spectrum management role more efficiently. With growing demands for radio based operations from broadcast, cellular, satellite, private radios, and other mobile radio service providers, the Commission no longer can afford to allow

the utilization of large sections of its spectrum by older, less efficient radio equipment. I note that, since my time at the Commission, we have initiated inquiries or rulemakings in several areas to address the need to require more efficient spectrum utilization in newer radio services. The assessment of new digital and computerized technologies in the High Definition Television (HDTV) and cellular radio areas is an example of our ongoing concerns for increased spectrum efficiency.

Second, one of the largest challenges we face today is finding means of allowing new and innovative uses of the spectrum without at the same time causing harmful interference. In the AM radio broadcast area, I recently supported actions to improve the quality of that broadcast service by restricting sources of additional potential interference. Regarding FM radio broadcast service, I also registered my concern about the integrity of existing FM broadcasters by supporting actions to control the utilization of FM translators. I do not believe that more is necessarily better when it comes to the radio broadcast service. While I am concerned that the Commission continue to fulfill its section 307(b) localism requirements through the allocation process, I also am concerned that each broadcaster have the ability to offer a quality signal and service to its local community.

Finally, I support the spectrum scarcity concept because I do not believe that we should treat broadcast licensees like any other business. I believe that broadcasters are public trustees licensed to serve the public interest. Despite possible inefficiencies, I support our comparative licensing process as a rational means for awarding licenses to U.S. citizens. I also support the public interest mandate, including efforts to control indecency, issue-responsive programming requirements, character requirements for licensees, and EEO requirements with which licensees are required to comply.

4(A). WHAT ARE YOUR IMPRESSIONS OF THE EFFORTS OF BROADCASTERS TO SERVE THE PUBLIC INTEREST?

4(B). DO YOU BELIEVE THAT BROADCASTERS SHOULD BE SUBJECT TO MORE EXPLICIT GOVERNMENT REGULATION, OR ARE THE CURRENT OBLIGATIONS ALREADY TOO ONEROUS?

(A) I believe the majority of broadcasters comply with the Communications Act and FCC policies and rules. While there are some areas in which improvement could be shown, most broadcasters are serving the public interest. Broadcasters primarily serve the public interest by providing their communities with programming that is responsive to issues of local concern. Moreover, most broadcasters are deeply involved with their local communities and help in providing information during local emergencies. As the FCC Defense Commissioner, I particularly have noted the efforts of broadcasters with respect to the Emergency Broadcast System. These and other efforts should be encouraged.

I also have been impressed by the public service campaigns conducted by broadcasters throughout this country. At local and national broadcast conventions, I have heard about broadcasters' efforts with respect to drug awareness, drunk driving, and other public service campaigns. Additionally, broadcast coverage of news events of national and international signficance demonstrates the valuable role broadcasters play in our lives.

While I generally believe broadcasters have made substantial contributions in serving the public interest, I recognize that there are some areas in which broadcasters could improve their efforts. With respect to indecency and violence, broadcasters could endeavor to develop voluntary programming guidelines to address these issues. They also could establish more qualitative standards for children's programming. Finally, despite the competitive nature of the broadcast market, broadcasters could try to avoid abuses of the Commission's comparative processes and make better efforts to comply with our EEO rules.

(B) Since arriving at the Commission, I have been required to examine this question in several contexts. On balance, I believe that there are certain broadcast areas, such as indecency, AM radio, FM translators, licensee character policy, and the comparative process, in which the Commission must provide more explicit regulation to deter abuses. On the other hand, there are other areas, such as the creation and distribution of programming, in which it is not as clear that more explicit Commission regulation would be effective. I believe the FCC must ensure that there is a public interest justification for any regulation of broadcasters.

The Commission must be cognizant of the changing times and adjust its regulatory framework to handle the changing media market. Working with the Congress and interested members of the public, I believe the FCC can determine which rules to retain, which to modify, and which rules to eliminate. Indeed, at our recent agenda meeting in May, we determined that rules effecting our comparative process and character policy need revisions in light of potential abuses in both areas.

5. AS YOU KNOW, THERE HAS BEEN A GREAT DEAL OF CONCERN ABOUT THE AMOUNT OF INDECENCY AND VIOLENCE ON TELEVISION. WHAT DO YOU BELIEVE SHOULD BE DONE TO IMPROVE THE QUALITY OF TELEVISION AND RADIO BROADCASTS?

In the area of indecency, the Commission has an obligation to protect our nation's youth and enforce the laws of Congress. I believe broadcasters are granted a license to serve the public interest. In that regard, broadcasters are charged with a responsibility to serve their audience in a professional manner. Part of radio and television audiences are young children and teenagers. To the extent there is a risk that children are prevalent in a listening or viewing audience, broadcasters should have an obligation to uphold their responsibilities under our indecency and obscenity rules. No one should be exempt from this requirement. Thus, I support enforcement actions against broadcasters who fail to uphold their responsibilities to the public in this regard.

Congress has mandated that we enforce a 24-hour ban on indecency. The Commission issued a Notice of Inquiry in October 1989 to establish a record that would support such a ban. Our comment period in this proceeding recently ended in April of this year. Since I have not completed a full examination of the record in this docket, I have yet to determine whether the 24-hour ban is supported by the comments in this proceeding. My intent in this regard is to support an indecency ban to the maximum extent allowable. While I believe that the FCC cannot be a complete substitute for the responsibilities that parents have toward their children, I do believe that we can assist the

parents of America by protecting their children from indecent broadcasts to the maximum extent allowable under the law.

With respect to both indecency and violence on television, I would support efforts to allow broadcasters to develop a set of voluntary guidelines to address these programming issues. To the extent Congress can provide legislation that addresses antitrust concerns in this regard, I believe that such an action would be an effective means of addressing the issues of indecent and violent TV programming. I would hesitate to involve the Commission in restricting programming violence due to censorship restraints under section 326 of the Communcations Act and a lack of statutuory authority to regulate violence. I think that Senator Simon's bill on TV violence is a good approach to resolving public concerns about programming standards on violence.

6. THE CONGRESS AND THIS COMMITTEE HAVE LONG GIVEN SUBSTANTIAL SUPPORT TO PUBLIC BROADCASTING. WHAT DO YOU THINK THE COMMISSION'S ROLE GENERALLY OUGHT TO BE IN ASSURING THE HEALTH AND VITALITY OF PUBLIC BROADCASTING?

I believe the Commission should take steps within our statutory authority to assist public broadcasting and recognize the vital role it plays in serving the American public. Public broadcasting is an important source of informative and diverse programming that enriches the overall quality of this country's broadcasting service. I have long been a supporter, listener and viewer of public broadcasting program services. As an FCC Commissioner, I have visited National Public Radio and the Public Broadcasting Service. I also have discussed issues with representatives of these organizations as well as the National Association of Public Television Stations. I have listened to their concerns to determine how the FCC can assist public broadcasters under its rules.

In the technical area, I have supported Commission proposals to eliminate or prevent additional interference to AM broadcasters. In conjunction with those actions, I issued a separate statement voicing my concern that public broadcasters be able to receive some consideration for allocations in the AM expanded band. I also have supported proposals to restrict the unauthorized use of FM translators by commercial stations. To the extent these translators utilize the spectrum and provide service to areas already served by other noncommercial FM stations, I continue to be concerned about their effect on local public radio stations.

In the financial area, I have supported the decision to ensure that the Commission's rules on commercial underwriting are applied in a reasonable manner. While I do not advocate the airing of commercials by public stations, I do believe that these stations need flexibility in the manner in which they air sponsorship identifications. I believe the Commission's recent action in the Xavier University case is a step in the right direction.

7. IF CONGRESS REINSTATES THE FAIRNESS DOCTRINE, WILL YOU ENFORCE IT?

If reinstated by the Congress, I would enforce fully the requirements of a codified fairness doctrine. I am concerned that controversial issues receive a "fair" airing from the media. While I understand the concerns of

broadcasters in this area, both practical and constitutional, I continue to believe that the Commission should not have voted to eliminate this doctrine. In addition, aside from my own beliefs on this doctrine, I recognize that when Congress determines that the public interest will be served best by the adoption of this policy, my role as a Commissioner is to enforce that law. That is exactly what I would do in this or any other situation in which Congress passed a law mandating Commission enforcement.

Common Carrier Issues

8. THE COMMISSION IS CONSIDERING A PROPOSAL TO LESSEN THE REGULATORY REQUIREMENTS ON AT&T BECAUSE OF THE COMPETITIVENESS OF THE LONG DISTANCE MARKET. HOW COMPETITIVE DO YOU BELIEVE THE LONG DISTANCE INDUSTRY IS AT THE MOMENT? DO YOU BELIEVE THAT IT IS NECESSARY TO UNDERTAKE A DETAILED STUDY OF THE LONG DISTANCE MARKET BEFORE REACHING A CONCLUSION ON THIS MATTER?

In assessing the relative competitiveness of the long distance industry, I believe it is important to look at different segments of the market. While certain services, such as high-speed private lines used to transmit data, may be increasingly competitive, other services, such as 800 Services, are less competitive due to technological factors or market conditions. The proposal adopted by the Commission in March takes a prudent approach by segmenting the markets in which AT&T offers services and proposing different treatment for different types of services depending on the nature and extent of competition for the service. This is a reasonable and balanced approach that will consider carefully the conditions of each market segment before loosening the regulatory constraints on AT&T. The proposal would eliminate unnecessary and potentially harmful regulation of fully competitive services, while recognizing the need to proceed cautiously in the case of services that are subject to less competition, either through transitional mechanisms, as in the case of international services, or through the continuation of current regulatory policies, as in the case of residential and small business services.

Regarding the need for a comprehensive study of long distance market, I do not think that such a study is necessary at this time. Although I am not ready to vote in favor of the proposal set forth in the Notice of Proposed Rulemaking at this moment, I am optimistic that it will elicit a thorough record containing all the arguments and empirical evidence, so that the Commission can arrive at a sound and reasoned outcome in this proceeding. If I find, however, that the record is inadequate, incomplete, or inconclusive, I would be reluctant to vote in favor of major action in this proceeding without further study of the issue.

9. YOU RECENTLY VOTED IN FAVOR OF A PLAN TO IMPLEMENT PRICE CAPS FOR LOCAL EXCHANGE CARRIERS IN THE NEAR FUTURE. ARE YOU CONCERNED THAT THE PRICE CAP PLAN MAY PERMIT THE CARRIERS TO EARN LARGE RETURNS IF THEIR COSTS ARE LOWER THAN EXPECTED, BUT PERMITS THE CARRIERS TO FILE FOR RATE INCREASE IF THEIR COSTS ARE HIGHER THAN EXPECTED?

I supported the proposal to move forward with incentive regulation because I believe traditional rate of return regulation mitigates incentives for cost

reduction, product innovation, efficiency, and increased productivity. If properly implemented, price caps would provide incentives for greater efficiency, increased productivity, and lower rates by allowing a carrier to earn higher profits when it is able to reduce its costs. Although I favor the principles, goals, and economic theories behind incentive regulation, I remain concerned about the need to resolve the important issues outstanding in the price cap proceeding so that the Commission can develop the right price cap plan.

Regarding the possibility of excessive earnings by the carriers that are subject to price caps, I support some sort of mechanism, be it a stabilizer, a "zone of reasonableness," or a sharing approach, that would allow consumers to participate in the gains derived by carriers that are able to decrease costs and thereby earn higher profits. The current proposal by the FCC seeks comment on possible ways to ensure that consumers, as well as carriers, reap the benefits of price cap regulation. Conversely, if the carriers' costs increase, they would have the ability under the price cap plan to seek above-cap or above-band rate increases. Although I neither expect nor want such a tariff to be filed, under the current statutory system, regulated carriers have an absolute right to file tariffs to change rates at any time. The Communications Act allows carriers to initiate rate changes at will and the FCC cannot restrict that right. The FCC can, however, change the standard of review it applies tariff filings. Therefore, if a carrier files an above-cap or above-band rate increase, claiming that the price cap rate would be confiscatory, the Commission will invoke the highest degree of scrutiny when reviewing that tariff. In cases in which the proposed rate is above the cap, the FCC will initiate a full-blown rate case that will require the carrier to show the costs underlying all its rates since the implementation of price caps. Although the FCC cannot deny carriers the right to file tariff changes, we can impose significant burdens on those carriers that claim they should be allowed to increase rates above the cap because their costs have increased.

10. DO YOU BELIEVE THAT ANY OR ALL OF THE RESTRICTIONS ON THE BELL OPERATING COMPANIES IMPOSED BY THE MODIFICATION OF FINAL JUDGMENT SHOULD BE LIFTED?

I previously have stated my support for the lifting of the information services and manufacturing restrictions, although I do not favor lifting the interexchange prohibition at this time. Chairman Alfred Sikes recently presented his views before the Senate Subcommittee on Communications, stating that, in the aggregate, the Bell Companies today constitute more than one half the financial and human resources comprising the U.S. telecommunications industry. I believe it is unwise for policymakers to so severely limit the largest American communications companies that the public may be denied the maximum benefits that the technology of the Information Age offers. If the public and competitors can be protected adequately, it does not make sense to exclude players with great expertise and capital resources from significant portions of the telecommunications market. My support for the lifting of the MFJ is conditioned on the adoption of adequate and appropriate safeguards. Most legislative proposals for the lifting of the restrictions would shift jurisdiction from the antitrust court to the FCC. As a current member of the FCC, I would be proud to be part of a Commission with renewed and expanded jurisdiction and would work hard to achieve the best for the public interest.

11. THE U.S. IS CLEARLY FALLING BEHIND THE REST OF THE WORLD IN ITS ABILITY TO COMPETE INTERNATIONALLY. THE TELECOMMUNICATIONS MARKETPLACE IS CLEARLY AN INTERNATIONAL MARKETPLACE WITH INCREASING COMPETITION. WHAT DO YOU FEEL SHOULD BE DONE TO IMPROVE THE U.S. COMPETITIVENESS IN THE COMMUNICATIONS INDUSTRY?

I believe one of the keys to improving the position of the United States in global telecommunications markets would be the lifting of the information services and manufacturing restrictions. Subject to appropriate safeguards, the elimination of those prohibitions would allow U.S. companies to participate more fully in foreign markets. For example, the National Science Foundation has tentatively concluded that investment in research and development by U.S. companies is not growing when compared to other countries and that U.S. companies are investing an increasing amount of research and development funds abroad. The lifting of the manufacturing prohibition would go far in rectifying this situation for the telecommunications industry. I also would like to see greater opportunities for U.S. companies in foreign markets, such as the developing European Community. I have long been troubled that foreign companies are often able to enter the U.S. market more freely and a lot sooner than U.S. companies can enter markets overseas. I fully support the opening of all markets to competing manufacturers and service providers from all countries.

12. YOU RECENTLY STATED THAT REGULATORS OFTEN HAVE A DIFFICULT TIME DETERMINING WHETHER A TELEPHONE COMPANY IS CROSS-SUBSIDIZING A COMPETITIVE ACTIVITY. WHAT DID YOU MEAN BY THIS? DO YOU BELIEVE THAT THE FCC CAN BE COUNTED UPON TO PREVENT UNLAWFUL CROSS-SUBSIDIZATION IF THE MFJ RESTRICTIONS ON THE BELL COMPANIES ARE LIFTED?

I meant that, based on many years as a state regulator, I know that perhaps the most difficult issue in regulation is the development of effective cost allocation policies and procedures. Those procedures are inevitably complex and fraught with opportunities for regulated entities to circumvent the purpose of the rules. This is true because the telephone companies are such large and complex organizations that it is virtually impossible to build into the rules safeguards against every possible opportunity to cross-subsidize. This problem is especially acute when, as is the current situation at the FCC, the regulator is faced with serious resource problems and a lack of sufficient numbers of qualified staff.

I therefore believe that, when allowing the telephone companies to engage in unregulated ventures or competitive activities, the FCC must condition that freedom on the adoption of regulatory policies that recognize the limits of the regulators' ability and resources. Accordingly, I generally support the requirement that the telephone companies be required to establish a separate subsidiary for unregulated services. I recognize, however, that in certain circumstances, a separate subsidiary may not be necessary. In addition, I believe the implementation of price caps with properly segregated baskets of services will do much to prevent cross-subsidization.

Senator INOUYE. Commissioner Barrett.

STATEMENT OF ANDREW C. BARRETT

Mr. BARRETT. Mr. Chairman and distinguished Members of the Committee, I really want to thank you for taking time out of your busy schedule to visit with me and to hold my hearing this morning. I want to take the time also to thank your staff who have been extremely supportive and generous of their time, not only in keeping us up to date on what your legislative mandates are but also for their general support of my staff that I think we needed over the last eight months.

It was a little less than a year ago that I came here and the President had nominated me to you and I asked you for your affirmation as the Commissioner. On April 25, 1990 once again he honored me, my family and my friends with another nomination for a full five-year term.

Mr. Chairman and distinguished Members, I respectfully ask that you share in that honor with me and affirm me as a Commissioner for the full five years.

I want to extend my thanks to you, Senator Inouye, because your staff has just been overbearingly nice and supportive and even though Senator Hollings is not here I especially want to thank him because on May 4 he took the time out to pick up that telephone and congratulate me on having been nominated. I think that general tenor and the new developments, if I may, of relationships between us are the kind that I hope we will have over the next five years.

Thank you, Mr. Chairman.

[The statement follows:]

OPENING STATEMENT OF
ANDREW C. BARRETT

Good morning Chairman Hollings, Chairman Inouye, and distinguished members of the Committee. I come before you as President Bush's nominee for a full term as a Commissioner on the Federal Communications Commission.

For the past eight months, I have been privileged to analyze and decide many complex policy issues as a Commissioner at the Federal Communications Commission. Working closely with Chairman Alfred Sikes and my fellow Commissioners, I have had an opportunity to take part in reshaping the Commission's policy framework for the 1990's and beyond. If given the opportunity, I look forward to continuing my work at the Commission and addressing the enormous range of complex issues facing our communications industry today.

Prior to coming to Washington, I had been a member of the Illinois Commerce Commission for nine years, during which time I gained experience in the field of telecommunications regulation and was involved in many other issues, such as water and electric utility regulation. Before joining the Illinois Commerce Commission, I spent five years in public service with the State of Illinois.

Since arriving at the Commission, I have utilized my experience as a former state regulator to learn and to address the issues confronting our nation's communications industries. This background, in addition to my current experience, has allowed me to effectively review such intricate policy matters as federal/state regulatory relationships regarding telecommunications, economic, competitive, and pricing issues affecting the telephone industry, spectrum allocation issues, broadcast and cable issues, and cable/telephone cross-ownership policy issues being considered by Congress and the Commission. Additionally, I have been able to apply my past experiences as a responsible citizen and active community leader in deciding communications policy matters affecting America's youth, such as our enforcement actions against indecent broadcasts and our actions to modify the Commission's character policy to encompass drug-related character violations and other criminal activities.

The importance of telecommunications to this nation cannot be overestimated. It is the circuits, fibers, coaxial cable, and radio waves that will serve as the rivers and highways of our future. The issues facing the FCC in the next five years will provide the opportunity to ensure that this country retains its place as the world's leader in telecommunications. On global, national, regional, and local levels, telecommunications will be a key component of our nation's well-being as we move toward the 21st century. This is because of the enormous potential benefits for society of a modern telecommunications infrastructure. These benefits will include significant improvements in health care, education, industry, social services, government, and economic development.

The vitality of our broadcasting system and the competitive growth of other media alternatives also is important to the continued growth of this nation. Mass media services provide a critical linking element in our society. The impact of broadcast, cable, and satellite programming on our thoughts and actions can be significant. Thus, the Commission must continue to do what it can to promote diversity and quality in mass media services. Today's media companies are involved in a competitive global market. The Commission must ensure that competition in this country among all media services continues to grow and prosper.

Despite many years of satisfying work for state government, I can honestly say that the time I have spent with the FCC has been the highlight of my career. I very much want to serve our nation in the next five years as a member of the Federal Communications Commission. I look forward to the possibility of continuing my work at the Commission. There is much to be done to ensure that America's communications industry is capable of competing in the global marketplace of the future. Further, by taking enforcement actions when necessary, there is much that can be done to ensure that America's youth are exposed to quality, educational, and accurate media programming.

I wish to thank you for the opportunity to once again stand before you as a candidate for confirmation of my nomination as a member of the Federal Communications Commission.

Senator INOUYE. I thank you. The record will show that all the necessary forms have been completed and filed with the committee, and they seem to be in order.

We have also submitted to the Commissioner a set of prehearing questions to which he has responded, and those questions and answers will be made part of the record.

Senator Burns, do you have any questions?

Senator BURNS. I have just a couple. Thank you, Mr. Chairman.

Commissioner, what initiatives would you undertake as FCC Commissioner? Do you have anything on the platter that you would like to complete in this five-year term or the balance for which you have been nominated? In general, are there any policy or procedural changes which you would like to make in the FCC?

Mr. BARRETT. I think, Senator, if you look at the Chairman's agenda, which obviously has been supported by the other commissioners, we have enough on the plate already. I think we have price caps; we have interexchange carriers docket, we have rate of return regulation docket and we probably will end up having the whole financial interest and syndication item. I think we have enough. The problem we have is, do we have enough time to manage those issues as opposed to the issues managing the agency. So I think that is enough.

The reason you have not heard from me in that line is I thought it appropriate to have the Chairman delineate and set out his issues in the directions that he wanted to go.

Senator BURNS. What is your general attitude toward competition versus regulation?

Mr. BARRETT. I am a believer that when there is a genuine marketplace—and I do mean genuine—that the market itself may work better than regulation. I think it offers more choices, it offers more reasonable prices and better service in the long run, I think.

Senator BURNS. That is about all I have, Mr. Chairman. Thank you very much.

Senator INOUYE. Thank you.

No one has questioned the absence of a quorum, and accordingly a quorum is present. Without objection, the subcommittee will report the nomination of Mr. Barrett to the full committee for its markup a week from tomorrow.

I hope that with the assistance of the Republican leader this matter can be cleared to be considered before the Memorial Day recess.

Mr. BARRETT. Thank you, Mr. Chairman.

Senator INOUYE. With that, I thank you very much, Mr. Barrett. The hearing is adjourned.

[Whereupon, at 11:10 a.m. the hearing was adjourned.]

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